

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 De'Marian Clemons,  
5 Plaintiff  
6 v.  
7 Gentry, et al.,  
8 Defendants  
9

2:17-cv-02071-JAD-CWH  
**Order Dismissing Case**

10 Pro se plaintiff De'Marian Clemons brings this civil-rights action under § 1983 for events  
11 that allegedly occurred while he was incarcerated at the Southern Desert Correctional Center.<sup>1</sup>  
12 On January 24, 2018, I denied his application to proceed *in forma pauperis* without prejudice  
13 because Clemons had “three strikes” under 28 U.S.C. § 1915(g), and I gave him until February  
14 23, 2018, to pay the \$400 filing fee.<sup>2</sup> I expressly warned him that his failure to pay the filing fee  
15 by that deadline would result in the dismissal of this case.<sup>3</sup> The deadline has now passed, and  
16 Clemons has not paid the filing fee.

17 District courts have the inherent power to control their dockets and, “[i]n the exercise of  
18 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>4</sup> A  
19 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a  
20 court order, or failure to comply with local rules.<sup>5</sup> In determining whether to dismiss an action  
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22 <sup>1</sup> ECF No. 1-1.

23 <sup>2</sup> ECF No. 4.

24 <sup>3</sup> *Id.*

25 <sup>4</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

26 <sup>5</sup> *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with  
27 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to  
28 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439,

1 for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the  
2 court must consider several factors: (1) the public's interest in expeditious resolution of  
3 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;  
4 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less  
5 drastic alternatives.<sup>6</sup>

6 I find that the first two factors—the public's interest in expeditiously resolving the  
7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.  
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury  
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
10 prosecuting an action.<sup>7</sup> The fourth factor is greatly outweighed by the factors in favor of  
11 dismissal, and a court's warning to a party that his failure to obey the court's order will result in  
12 dismissal satisfies the consideration-of-alternatives requirement.<sup>8</sup> Clemons was warned that his  
13 case would be dismissed without prejudice if he failed to pay the filing fee by February 23,  
14 2018.<sup>9</sup> So, Clemons had adequate warning that his failure to pay the fee would result in this  
15 case's dismissal.

16 Accordingly, IT IS HEREBY ORDERED that **this case is DISMISSED** without  
17 prejudice based on Clemons's failure to pay the filing fee in compliance with my January 24,  
18 2018, order.

19 . . .

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21 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs  
22 to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.  
23 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,  
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 <sup>6</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,  
25 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.


26 <sup>7</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 <sup>8</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 <sup>9</sup> ECF No. 4.

The Clerk of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**.

DATED: March 6, 2018.

  
U.S. District Judge Jennifer A. Dorsey